

DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner

Case No.: 2012-DOH-F100397

v.

JEANNIE O'DONNELL
Respondent

FINAL ORDER

I. Introduction

A. Summary of Final Order

ISSUE: Whether Respondent Jeannie O'Donnell held herself out as a nutritionist and practiced dietetics without a license in violation of D.C. Official Code § 3-1210.01.

HELD: Respondent is liable for practicing as a nutritionist and dietitian without a license in violation of D.C. Official Code § 3-1210.01. The authorized fine of \$2,000 is imposed.

B. Procedural History

This case arises under the District of Columbia Health Occupations Revision Act of 1985 (the "Act"), as amended, D.C. Official Code §§ 3-1201.01 *et seq.* On January 12, 2012, the Department of Health (the "DOH") served a Notice of Infraction ("NOI") on Jeannie O'Donnell ("Respondent"), charging her with violating D.C. Official Code § 3-1210.01 for practicing a health occupation of dietetics and nutrition without a license. The violation allegedly occurred at

Starbucks located at 3430 Wisconsin Avenue, N.W. on January 12, 2012. The Government seeks a fine of \$2,000.

Respondent timely answered the NOI entering a plea of Deny. Accordingly, an evidentiary hearing convened on February 8, 2012.

On the date of the hearing, DOH appeared represented by Rudolph Schreiber, Assistant Attorney General. Emilia Moran, the charging investigator who issued the NOI testified on behalf of the Government. Respondent appeared on her own behalf.

Based upon the testimony at the hearing, my evaluation of the credibility of the witnesses and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

1. On December 27, 2011, Investigator Moran began communicating by email with Respondent using an alias email address for Mary Thompson—(thompsonm02@gmail.com)-- seeking a nutritionist and coach as well as a diet and exercise plan to lose weight. Petitioner's Exhibit "PX" 106.
2. Respondent, through her e-mails to Investigator Moran, recommended using a habit log to track food, exercise, and sleep. She further advised Investigator Moran that her fee for a January session would be \$55 per session, and that packages are available. PX 106.
3. On January 12, 2012, Investigator Moran met Respondent at Starbucks at 3430 Wisconsin Avenue, N.W.

4. While there, Investigator Moran asked Respondent about exercise and eating habits.
5. Respondent advised Investigator Moran that she does not accept health insurance, but that her fee was better than what a dietitian would charge.
6. Respondent is not a licensed nutritionist or dietitian. PX 105.
7. On Respondent's website on December 22, 2011 and continuing through January 12, 2012, Respondent advertised her services as "a healthy lifestyle coach and certified nutritionist who has been practicing in the DC area since 2000." PX 100.2.
8. Respondent further advertises on her website that "she teaches her clients how food and fitness are keys to good health and overall well-being." PX 100.2.
9. Respondent's website has always listed her nutrition certifications through "the Cooper Institute and the National Personal Training Institute." PX 100.2 and Respondent's Exhibit "RX" 202.
10. On February 5, 2012, Respondent advertised on her website as offering the following services: "One-on-one and group coaching; seminars and talks on improving lifestyle habits, including those around exercise, sleep and stress management; healthy shopping and fridge makeovers [sic]." RX 201.
11. By February 5, 2012, Respondent had altered the biographical information on her website by deleting the reference to "certified nutritionist" who has been practicing in the DC area since 2000. RX 202.

12. Respondent's client, Ellen Pierson, provided a statement regarding Respondent's services because Respondent "has helped [her] become more mindful of lifestyle habits with regard to eating, exercise, sleep and how [she] manages stress." RX 206.

III. Conclusions of Law

DOH charged Respondent with violating D.C. Official Code § 3-1210.01, which states in pertinent part:

No person shall practice, attempt to practice, or offer to practice a health occupation licensed, registered, certified, or regulated under this chapter in the District unless currently licensed, registered, or certified, or exempted from licensure, registration, or certification, under this chapter.

This statute must be read in conjunction with D.C. Official Code § 3-1210.02, captioned "Definitions of health occupations," which states in pertinent part:

For the purposes of this chapter, the term:

(6)(A) **"Practice of dietetics and nutrition" means the application of scientific principles and food management techniques to assess the dietary or nutritional needs of individuals and groups, make recommendations for short-term and long-term dietary or nutritional practices which foster good health, provide diet or nutrition counseling, and develop and manage resources of the patient or client.**

(B) Nothing in this paragraph shall be construed as preventing or restricting the practices, services, or activities of dietetic technicians and dietetic assistants working under the supervision of a licensed dietitian or nutritionist, other health professionals licensed pursuant to this chapter, or other persons who in the course of their responsibilities offer dietary or nutrition information or deal with nutritional policies or practices on an occasional basis incidental to their primary duties, **provided that they do not represent by title or description of services that they are dietitians or nutritionists.**[Emphasis supplied.]

D.C. Official Code § 3-1210.03(f) also states:

Unless authorized to practice dietetics or nutrition under this chapter, a person shall not use or imply the use of the words or terms “dietitian/nutritionist,” “licensed dietitian,..” “dietitian,” “nutritionist,”... or any similar title or description of services with the intent to represent that the person practices dietetics or nutrition.[Emphasis supplied.]

The Government is required to and has met its burden of proving its case by a preponderance of the evidence that Respondent violated D.C. Official Code § 3-1210.01 by holding herself out as a nutritionist in violation of the law because, as of the date of the violation charged, on January 12, 2012, she represented to the public on her website (PX 100.2 and RX 202) that she was a certified nutritionist, although she did not hold a license to practice that profession.

Respondent contends that she is doing nothing more than what a personal trainer or yoga instructor would do, or what Weight Watchers offers. She further contends that because she never wrote a diet plan for the investigator, she did not violate the law, nor hold herself out as a dietitian. Respondent’s arguments are misplaced. Respondent violated the law by holding herself out on her website as a practicing nutritionist. PX 100.2. In addition, as discussed previously, in her conversations with Investigator Moran, she implied that she was in the practice of providing her client with advice on eating well and making lifestyle changes by changing habits. Even the revisions to Respondent’s website on February 5, 2012, in RX 202, referenced and/or implied Respondent was a certified nutritionist.

I, therefore, conclude that prior to, and on January 12, 2012, Respondent held herself out as a “certified nutritionist” on her website, PX 100.2, and that Respondent met with Investigator

Moran with the intent to charge her \$55 per session, a fee an individual might be induced to pay based on the misrepresentation that Respondent was a nutritionist authorized to practice in DC, and to provide advice on using a habit log to track diet, exercise, sleep etc. PX 107.

A violation of D.C. Official Code § 3-1210.01 is punishable by a fine of \$2,000 as a first offense. 16 DCMR 3601.1; 16 DCMR 3201.1(a)(1). The authorized fine will be imposed.

IV. Order

Based upon the above findings of fact and conclusions of law, it is this _____ day of _____ 2012:

ORDERED, that Respondent is **LIABLE** for violating D.C. Official Code § 3-1210.01, as charged in the Notice of Infraction No. F100397; and it is further

ORDERED, that Respondent shall pay a fine of **TWO THOUSAND DOLLARS (\$2,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the sum owed within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-

1802.03(f), the placement of a lien on real or personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

Claudia Barber
Administrative Law Judge